

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

Filed: July 16, 2020

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ELIZABETH LAMPMAN,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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UNPUBLISHED

No. 18-1759V

Special Master Gowen

Attorneys' Fees and Costs

Michael G. McLaren, Black McLaren, et al., PC, Memphis, TN, for Petitioner.

Julia M. Collison, United States Department of Justice, Washington, DC, for Respondent.

DECISION ON ATTORNEYS' FEES AND COSTS¹

On March 10, 2020, Elizabeth Lampman ("Petitioner") filed a motion for attorneys' fees and costs. Motion for Attorney Fees and Costs ("Fees App.") (ECF No. 38). For the reasons discussed below, I **GRANT** Petitioner's motion for attorneys' fees and costs and award a total of **\$44,974.29**.

I. Procedural History

On November 15, 2018, Petitioner filed a petition in the National Vaccine Injury Compensation Program.² Petitioner alleged that as a result of receiving an influenza ("flu") vaccine on September 11, 2017, she suffered a shoulder injury related to vaccine administration ("SIRVA") and gastroparesis. On November 25, 2019, the parties filed a stipulation, which I adopted as my

¹ I intend to post this Ruling on the United States Court of Federal Claims' website. **This means the Ruling will be available to anyone with access to the Internet.** In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access. Because this unpublished ruling contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services).

² The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-1 to -34 (2012) ("Vaccine Act" or "the Act"). All citations in this decision to individual sections of the Vaccine Act are to 42 U.S.C.A. § 300aa.

decision awarding compensation on the same day. (ECF No. 33).

On March 10, 2020, Petitioner filed a motion for final attorneys' fees and costs. Petitioner requests compensation in the total amount of \$48,080.04, representing \$39,323.20 in attorneys' fees and \$8,547.19 in costs. Fees App. at 7. Pursuant to General Order No. 9, Petitioner warrants she has not personally incurred any costs in pursuit of her claim. Fees App. Ex. 3. Respondent reacted to the fees motion on March 11, 2020, stating that "Respondent is satisfied the statutory requirements for an award of attorneys' fees and costs are met in this case." Response at 2 (ECF No. 101). Petitioner did not file a reply thereafter.

The matter is now ripe for adjudication.

II. Analysis

Under the Vaccine Act, the special master may award reasonable attorneys' fees and costs for a petition that does not result in an award of compensation but was filed in good faith and supported by a reasonable basis. § 300aa-15(e)(1). Here, because Petitioner was awarded compensation pursuant to a stipulation, she is entitled to a reasonable award of final attorneys' fees and costs.

Petitioners "bea[r] the burden of establishing the hours expended, the rates charged, and the expenses incurred" are reasonable. *Wasson v. Sec'y of Health & Human Servs.*, 24 Cl. Ct. 482, 484 (1993). Adequate proof of the claimed fees and costs should be presented when the motion is filed. *Id.* at 484 n. 1. The special master has the discretion to reduce awards *sua sponte*, independent of enumerated objections from the respondent. *Sabella v. Sec'y of Health & Human Servs.*, 86 Fed. Cl. 201, 208-09 (Fed. Cl. 2009); *Savin v. Sec'y of Health & Human Servs.*, 85 Fed. Cl. 313 (Fed. Cl. 2008), *aff'd* No. 99-537V, 2008 WL 2066611 (Fed. Cl. Spec. Mstr. Apr. 22, 2008).

a. Attorneys' Fees

Petitioner requests the following hourly rates for the work of her counsel at Black McLaren: for Mr. Michael McLaren, \$456.00 per hour for work performed in 2018 and \$464.00 per hour for work performed in 2019; for Mr. William Cochran, Jr., \$377.00 per hour for work performed in 2018 and \$391.00 per hour for work performed in 2019; and for Mr. Chris Webb, \$326.00 per hour for work performed in 2018, \$338.00 per hour for work performed in 2019, and \$351.00 per hour for work performed in 2020. Fees App. at 8. Mr. McLaren's 2018 rate exceeds the maximum amount prescribed by the OSM Fee Schedule for 2018, and shall therefore be reduced to \$455.00 per hour, resulting in a reduction of \$1.00.³ The rest of the requested rates are reasonable and consistent with what counsel has previously been awarded for Vaccine Program work.

Turning next to review of the submitted billing statement, I find that the overall hours spent on this matter require reduction. There are several minor issues throughout the billing records, such as paralegals billing time for handling the payment of records and duplicative time billed by attorneys and paralegals in reviewing case filings. These issues have previously been noted in other

³ The OSM Fee Schedules are available at: <http://www.cofc.uscourts.gov/node/2914>.

cases awarding fees to Black, McLaren attorneys. *See, e.g., Montgomery v. Sec’y of Health & Human Servs.*, No. 15-1037V, 2020 WL 2510442, at *4 (Fed. Cl. Spec. Mstr. Apr. 29, 2020). However, because these issues are relatively minor in the instant case compared to other cases such as *Montgomery*, the undersigned shall reduce the final award of attorneys’ fees by \$1,000.00 to account these issues. Accordingly, Petitioner is awarded final attorneys’ fees of **\$38,322.20**.

b. Attorneys’ Costs

Like attorneys’ fees, a request for reimbursement of costs must be reasonable. *Perreira v. Sec’y of Health & Human Servs.*, 27 Fed. Cl. 29, 34 (Fed. Cl. 1992). Petitioner requests total attorneys’ costs in the amount of \$8,547.19. This amount is comprised of acquiring medical records, postage, the Court’s filing fee, travel costs associated with a client meeting, and expert work performed by Dr. M. Eric Gershwin. Among the travel costs is a charge of \$1,895.10 for first class airfare. Fees App. Ex. 2 at 41.

Counsel in this case has been repeatedly warned not to bill the Vaccine Program for first class travel but continues to do so. *See, e.g., Spivey v. Sec’y of Health & Human Servs.*, No. 18-0959V, 2019 WL 7580151 (Fed. Cl. Spec. Mstr. Dec. 12, 2019); *Lepper v. Sec’y of Health & Human Servs.*, No. 18-0984V, 2019 WL 7580152 (Fed. Cl. Spec. Mstr. Dec. 12, 2019); *Digerolamo v. Sec’y of Health & Human Servs.*, No. 16-0920V, 2019 WL 4305792 (Fed. Cl. Spec. Mstr. Jun. 28, 2019); *Wright v. Sec’y of Health & Human Servs.*, No. 12-0423V, 2018 WL 7051676 (Fed. Cl. Spec. Mstr. Dec. 10, 2018). Counsel has also been previously informed that if first-class travel costs continued to be submitted for reimbursement, they would be denied in their entirety. *See Robinson v. Sec’y of Health & Human Servs.*, No. 18-1134V, Slip. Op. 46 (Fed. Cl. Spec. Mstr. May 8, 2020); *Montgomery*, 2020 WL 2510442 at *6 n. 6. Accordingly, I will not reimburse Petitioner for this cost.

The rest of the requested costs appear reasonable and are supported by adequate documentation. Petitioner is therefore awarded final attorneys’ costs of **\$6,652.09**.

III. Conclusion

In accordance with the foregoing, Petitioner’s motion for attorneys’ fees and costs is **GRANTED**. I find that Petitioner is entitled to a reimbursement of attorneys’ fees and costs as follows:

Attorneys’ Fees Requested	\$39,323.20
(Reduction of Fees)	- (\$1,001.00)
Total Attorneys’ Fees Awarded	\$38,322.20
Attorneys’ Costs Requested	\$8,547.19
(Reduction of Costs)	- (\$1,895.10)
Total Attorneys’ Costs Awarded	\$6,652.09
Total Attorneys’ Fees and Costs	\$44,974.29

Accordingly, I award a lump sum in the amount of \$44,974.29, representing reimbursement for Petitioner's attorneys' fees and costs, in the form of a check payable to Petitioner and her attorney, Mr. Michael McLaren.⁴

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court shall enter judgment in accordance herewith.⁵

IT IS SO ORDERED.

/s/Thomas L. Gowen
Thomas L. Gowen
Special Master

⁴ This amount is intended to cover all legal expenses incurred in this matter. This award encompasses all charges by the attorney against a client, "advanced costs," and fees for legal services rendered. Furthermore, Section 15(e)(3) prevents an attorney from charging or collecting fees (including costs) that would be in addition to the amount awarded herein. *See generally Beck v. Sec'y of Health & Human Servs.*, 924 F.2d 1029 (Fed. Cir. 1991).

⁵ Entry of judgment can be expedited by each party's filing of a notice renouncing the right to seek review. Vaccine Rule 11(a).